Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1513

MICHAEL HERBERT DENGLER,

Appellant,

vs.

ATTORNEY GENERAL, STATE OF MINNESOTA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota on the ground that the question is so unsubstantial as not to warrant further argument.

STATEMENT

This is an appeal from the judgment of the Supreme Court of Minnesota affirming the state district court's denial of appellant's application pursuant to Minn. Stat. §§ 259.10 and .11 (1978) to change his name from Michael Herbert Dengler to 1069.[1]

Appellant commenced this action by the filing of an application to the Hennepin County district court for a change of name pursuant to Minn. Stat. §§ 259.10 and .11 (1978). As noted, appellant sought to change his name from Michael Herbert Dengler to the numerals 1069. In the non-adversary change of name proceeding, appellant introduced testimony concerning both his desire to use the numerals 1069 as his name and his actual use of those numerals as his name for several years preceding the district court action. As described in Appellant's Statement of the Case, he also provided testimony concerning the acceptance by others of his numerical "name" in both private and governmental contexts. In addition, appellant testified that some private and governmental entities have rejected the use of his numerical "name" without the sanction of a court order. Testimony was also presented establishing that appellant met the literal requirement of section 259.11 that the change of name was not sought with the intent to defraud or mislead.

Although the district court found that appellant was not motivated by any fraudulent intent, it denied his application on the ground that the courts should not be used to foster what it perceived as a bureaucratic and dehumanizing trend toward

[1] The text of the statutes involved and the decisions of the courts below are reproduced in the appendix to Appellant's Jurisdictional Statement (hereinafter cited "A- ").

the identification of individuals by numbers rather than names. Appellant appealed this denial to the Supreme Court of Minnesota, asserting that his constitutional rights to free speech, expression, and privacy were violated by the district court's action. Because appellant challenged the constitutionality of the change of name statute as applied to his application, the Attorney General for the State of Minnesota intervened as appellee in support of the statute.

The state Supreme Court affirmed the denial of appellant's application, although on different grounds than those relied on by the district court. The Court concluded that while the district court had some discretion to deny judicial approval of a name change on grounds other than those explicitly stated in the statute, that discretion does not extend to the dehumanizing consequences relied on by the district court. The Court found it unnecessary to address the constitutional issues raised by appellant, concluding:

> The state has taken no action to prevent appellant from using "1069" as his official name. The refusal of the Court to act on his application denies him none of the common law rights he now enjoys.

A-13 (footnote omitted). Finally, the Court concluded that the denial of appellant's application was correct based on its judgment that the Minnesota legislature had not intended Minn. Stat. §§ 259.10 and .11 (1978) to authorize a court order which changes a name to one expressed in numerals rather than letters. It is from that judgment of the Minnesota Supreme Court that appellant has appealed to this Court.

ARGUMENT

Because of the nature of this case and the limited scope of the decision of the Minnesota Supreme Court, this appeal does not present any substantial constitutional question that warrants further argument. Appellant characterizes this case as involving the broad issue of an individual's alleged constitutional right to use any "name" of his choosing — including one composed exclusively of Arabic numerals — free from any unjustified government restriction. However, the question of the existence of such a constitutional right is not presented by this appeal. Appellant is not challenging any state statute, common law rule, or administrative action that precludes him from using the "name" of his choice. To that extent this appeal is distinguishable from cases discussed by appellant. Both *Jech v. Burch*, 466 F.Supp. 714 (D. Hawaii 1979) and *Secretary of Commonwealth v. City Clerk of Lowell*, 366 N.E.2d 717 (Mass. 1977) involved state action that dictated the choice of names available to parents in naming their children. Similarly, *Forbush v. Wallace*, 341 F.Supp. 217 (M.D. Ala. 1971), *aff'd* 405 U.S. 970 (1972), was a challenge to Alabama's adherence to the common law rule that a woman assumes her husband's surname on marriage.

In contrast, the judgment of the Minnesota Supreme Court at issue has not imposed any restriction on appellant in the use of his chosen "name," nor has it affirmed or authorized any state action that would inhibit that use. The state court affirmed appellant's common law right to use 1069 as his official name. Because of the absence of any governmental interference with the use of appellant's chosen "name," the state court properly declined to rule on the question of the existence

of constitutional rights that would prohibit such state action,[2] noting that the courts are available to appellant "to assert any substantial right which may arbitrarily be refused him because of the mode of identification he has selected for himself." A-14[3]

Even with respect to the change of name procedure that appellant voluntarily invoked, his choice of names has not been limited by the state. The state court indicated that appellant would not be precluded from utilizing the statutory name change procedure to change his name to "One Zero Six Nine." The limited holding of the state Supreme Court was that, pursuant to its determination of legislative intent, the Minnesota change of name statutes, Minn. Stat. §§ 259.10 and .11 (1978), do not authorize a court to issue an order designating Arabic numerals as a name. The court was merely recognizing that historically and traditionally the term "name" refers to words which, when written, are composed of letters—in our culture using the Roman or Latin alphabet.

Thus, the issue presented is not whether the state procedure unduly restricts appellant's choice of a name, but whether the legislature intended to authorize courts to approve names written in any characters of an applicant's choosing—be it

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[2] Because appellant challenges the constitutionality of the state statutes only as applied to him and because the state court did not reach the constitutional issue, this case may not fall within the Court's appellate jurisdiction under 28 U.S.C. § 1257 (2). In that event, and if the Jurisdictional Statement is treated as a petition for a writ of certiorari, appellant submits that the petition should be denied for the reasons stated herein.

[3] Appellant testified in the district court that the Minnesota Department of Public Safety had refused to issue a driver's license to him in his chosen name. As the state court intimated, the proper forum in which to balance appellant's asserted constitutional rights against the legitimate interests of the state would be in a direct challenge to such restrictive government action. Thus, the issue would be presented in an adversary setting in which the competing interests could be properly weighed.

Arabic numerals, a foreign alphabet, or Morse code. Indeed, even the names to which we are accustomed are capable of being expressed with a variety of symbols, including other alphabets such as the Greek or Cyrillic. The Minnesota Supreme Court has ruled only that when an individual seeks court approval of his chosen name, the court is only authorized by Minn. Stat. §§ 259.10 and .11 to issue its order in the characters in which names are historically written in our society—that is, Roman letters. Appellee submits that such a ruling is not only reasonable, but is such a *de minimis* limitation on the rights asserted by appellant as not to raise any substantial questions for this Court's consideration.

CONCLUSION

For the reasons stated herein, appellee respectfully submits that the appellant presents no substantial question for the decision of this Court, and the appeal should be dismissed, or, in the alternative, the judgment below affirmed.

Respectfully submitted,

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